[redacted]

[redacted] July 15, 1994 [redacted]

BY HAND

Richard B. Smith, Esq.
Staff Attorney
Pre-Merger Notification Office
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Dick:

This is to confirm our conversation in which you agreed with our conclusion that the transaction discussed below need not be reported under the Hart-Scott-Rodino Act.

Company A, a non-manufacturing company, wishes to acquire 100% of the stock of Company B, also a non-manufacturing entity. The Hart-Scott-Rodino Antitrust Improvements Act provides that the size-of-person test for companies not engaged in manufacturing is met where the acquiring person (Company A) has total assets or annual net sales of $100 Million or more. Company A meets that requirement. In addition, before reporting is necessary the Act requires that the acquired company (Company B) have total assets of $10 Million or more. 15 U.S.C. § 18A(a)(2)(B)

Section 801.11(b) of the Federal Trade Commission's rules provides that the total assets of a person are those stated on the last regularly prepared balance sheet of the person, as long as the balance sheet was prepared within 15 months of the Hart-Scott-Rodino filing or consummation of the acquisition. 16 C.F.R § 801.11(b)(2) and c(2) The balance sheet must have been prepared in accordance with "the accounting principles normally used by such person." 16 C.F.R. § 801.11(b)(2) The Statement of Basis and Purpose for the Hart-Scott-Rodino rules states that the Commission had considered requiring that financial statements be prepared in accordance with generally accepted accounting principles (GAAP), but in the final rule deleted those words. The final rule requires use of the accounting principles normally used by the company. 43 Fed. Reg. 33450, 33473 (1978)

Company B's year end statement is prepared in accordance with GAAP and it shows assets totaling less than $10 Million. It's most recent balance sheet is for the quarter ending on June 30, 1994. The quarterly statement was prepared in accordance with the

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accounting principles Company B normally uses for its quarterly statements. The amount of total assets is less than $10 Million. If the quarterly statement had been prepared in accordance with GAAP, the total assets would have been slightly in excess of $10 Million. However, since rule 801.11 does not require that the balance sheet be prepaid in accordance with GAAP, but only in accordance with accounting principles normally used by the person, the size-of-person test is not met by Company B and no filing need be made.

Should you disagree with the above, please notify me immediately.

Thank you very much.

Sincerely,

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7/19/94 - Called writer. She confirmed that Company B's last financial statement (prepared in accordance with GAPP) indicated Company B's sales as [illegible] 11 MM, in the neighborhood of 39MM. She said that the outside auditor used GAPP for the year end statements but that Company B's financial personnel had used internal procedures for years which, they felt, more accurately reflected the business in which Company B was engaged. I advised that Company B did not meet the size-of-person test under 15 USC 18a(a)(2)(B).

RBSmith

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